

**ETHAN CONSTRUCTION**  
**SUBCONTRACT AGREEMENT**

JOB # 041107

THIS SUBCONTRACT AGREEMENT (THE "SUBCONTRACT") is made December 13, 2004 by and between Ethan Construction, a Seattle Company, 1420 5th Ave, Suite 2625, Seattle, Washington 98101, (the "Contractor")

And the Subcontractor      **Conco**  
   **18644 72nd Ave. S**

**Kent, WA 98032**  
**(425) 251-1684**

The Contractor has made a Contract for construction (the "General Contract") dated November 7, 2004 with

The Owner                      **Rainier Commons, L.L.C.**  
   **1420 5th Avenue**  
   **Seattle, WA 98101**

For the following Project:      **Rainier Commons**  
   **1420 5th Ave, Suite 2625**  
   **Seattle**

The Architect for the Project is **LDG Architects**  
   **1319 Dexter Ave. N**  
   **Seattle, WA 98109**

The Contractor and the Subcontractor, for the consideration herinafter named, agree as follows:

**SECTION 1. THE WORK OF THIS SUBCONTRACT**

The Subcontractor and the Contractor agree that the Subcontractor is to perform the following, which shall be defined as the "Work". The Subcontractor acknowledges 1) receipt of all plans and specifications applicable to the Work, 2) that the Subcontractor has been provided with access to all plans and specifications for the project, and 3) that the Subcontractor relied upon such plans and specifications as the Subcontractor deemed necessary when submitting the bid and entering into this Subcontract. The Work is described as follows:

**3188 Shotcrete Walls**

All labor, materials, and equipment necessary to accomplish the work set out in the contract documents for this section of work, and without limiting the generality of the foregoing, inclusive of all the terms attached to this contract.

**SECTION 2. PAYMENTS**

The Contractor agrees to pay the Subcontractor for the performance of the work, the sum of **\$218,968.00** **Two Hundred Eighteen Thousand Nine Hundred Sixty Eight Dollars And No Cent** (the "Subcontract Sum") subject to the provisions set forth below. All local state and federal taxes, including without limitation sales and use taxes, incurred as a result of the Work shall be paid by the Subcontractor and are deemed included in the Subcontract Sum.

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Rainier Commons

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To acct:

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**RCLLC 0000196**

3.10 Subcontract Documents. The Subcontract Documents consist of this Subcontract; the General Contract, consisting of the agreement between the Owner and the Contractor and any other documents enumerated therein, including conditions of the contract, drawings, specifications, addenda and modifications, whether issued before or after the execution of this Subcontract; the Job Progress Schedule, including modifications thereof; General Rules and Procedures and modifications thereof; and Addenda, modifications, or attachments to this Subcontract.

3.20 Conflict between Documents. In the event of a conflict between this Subcontract and the General Contract between the Contractor and Owner, the latter shall control if more stringent than the Subcontract.

3.30 Definition of Subcontractor. The term Subcontractor as used herein includes the Subcontractor, other subcontractors employed by the Subcontractor, their employees, agents, and representatives. The Subcontractor understands that references are occasionally made in specification books, drawings or other documents which refer to the Subcontractor as a contractor. The use of any such terms are to be interpreted so as to include the Subcontractor.

#### **SUBCONTRACTORS OBLIGATIONS**

4.10 Execution and Progress of the Work.

4.11 The Subcontractor agrees to perform the Work in complete accordance with the Subcontract Documents and to furnish and pay for all things necessary for its performance of the Work, including without limitation materials, labor, supervision, tools, equipment, supplies, freight and transportation, storage, offices, communications, taxes, fees, permits and licenses attributable to the Work, all of which are included in the Subcontract Sum.

4.12 Diligent Prosecution of Work. The Subcontractor agrees to commence the Work when directed by the Contractor and to diligently and continuously prosecute and complete the Work within the time specified in the Subcontract Documents so that the Contractor shall not be delayed by any act or omission of the Subcontractor in completion of the General Contract. The Subcontractor shall cooperate with the Contractor in scheduling and performing the Subcontractor's work to avoid conflict, delay in, or interference with the work of the Contractor, other subcontractors or the Owner's own forces. The Subcontractor shall furnish to the Contractor periodic progress reports on the Work.

4.13 Job Progress Schedule. The Subcontractor agrees to comply with the Job Progress Schedule provided by the Contractor, which shall set forth the schedule for completion of the Work and portions thereof, including all deadlines. The Job Progress Schedule may be modified from time to time by the Contractor. If the Subcontractor at any time anticipates it will be unable to comply with the Job Progress Schedule, the Subcontractor shall immediately notify the Contractor in writing of the nature of the problem and the expected delays.

4.14 General Rules and Procedures. The Contractor in its discretion may establish General Rules and Procedures for the Subcontractor which apply to performance of the Work. The Subcontractor agrees to comply with all such General Rules and Procedures.

4.20 Laws, Permits, Fees and Notices.

4.21 Compliance and Licenses. The Subcontractor shall be responsible for ascertaining all governmental laws and regulations pertaining to its performance of the Work. The Subcontractor shall give all notices required and otherwise comply with all laws, ordinances, rules, regulations and orders of any authority bearing upon performance of the Work. ~~The Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.~~

4.22 Taxes and Worker's Compensation. Without limitation, the Subcontractor shall comply with all federal, state and local tax laws, social security acts, unemployment compensation acts, and worker's compensation acts applicable to the performance of this Subcontract.

4.30 Safety Precautions, Meetings, and Procedures.

precautions with respect to performance of this Subcontract, including compliance with all governmental and other safety standards and any safety measures established by the Contractor, including without limitation those in the "Contractor Safety Manual." The Subcontractor shall adequately inform its subcontractors, employees, visitors and suppliers of all safety hazards and procedures, and shall provide all safety equipment required for the Work. The Contractor may, at the Subcontractor's expense, correct or remove any unsafe condition not corrected or removed by the Subcontractor after notice, and may require the Subcontractor to remove any employee from the Project who willfully creates an unsafe condition or commits an unsafe act. The Subcontractor shall report to the Contractor within 24 hours any injury to an employee or agent of the Subcontractor which occurred as a result of the Work.

4.32 Meetings. Prior to starting the Work, the Subcontractor shall submit a written safety program with details as to the performance of the Work. The Subcontractor shall have a supervisor or other appropriate representative attend all pre-mobilization and weekly safety and project meetings scheduled by the Contractor.

4.33 Hazardous Materials. The Subcontractor shall be required to notify the Contractor in writing of any hazardous materials it plans to utilize with respect to the Work or which it encounters on the Project.

4.40 Material Safety Data Sheets. The Subcontractor must provide to the Project Superintendent, all relevant Material Safety Data Sheets (MSDS) prior to any such materials being brought onto the Project site.

4.50 Cleaning Up.

4.51 Clean Site. The Subcontractor understands that a clean site is important for safety purposes. The Subcontractor is required daily to keep the Project site clean and remove the Subcontractor's debris on a daily basis.

4.52 Failure to Keep Clean. If the Subcontractor fails to keep the site clean, the Contractor is authorized to employ, and the Subcontractor agrees to pay, cleanup workers at the rate of \$50.00 per hour.

4.60 Protection and Condition of Work.

4.61 Protection of Subcontractor's Work. The Subcontractor shall effectively secure and protect its materials and work at its sole expense.

4.62 Protection of Other's Work. The Subcontractor shall take necessary steps in carrying out its Work to protect the work, materials, tools, equipment and supplies of others, including the Owner, from damage caused by the Subcontractor's operations.

4.63 Condition of Other's Work. If the Subcontractor deems that work to which its work is to be applied or affixed is unsatisfactory or unsuitable, written notification of said condition shall be given to the Contractor before proceeding or taking remedial action, otherwise the Subcontractor shall be fully and solely responsible and liable for any and all expense, loss, or damages resulting from said condition and the Contractor shall be relieved of all liability in connection therewith.

4.70 Warranties.

4.71 Warranty. The Subcontractor warrants to the Owner, Architect and Contractor that the Work, including materials and equipment furnished under this Subcontract, will comply with the requirements of the Subcontract Documents. The Subcontractor warrants that the Work shall be free of defects in materials and workmanship for a period of one (1) year from the date of substantial completion of the Project, unless a longer period is stated in the General Contract, in which case the Subcontractor shall warrant the work for the longer period of time.

4.72 Other Warranties. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract.

4.73 OSHA. The Subcontractor further warrants that the Subcontractor will comply with all OSHA rules and regulations in addition to all of the Contractor's safety manual guidelines, and the Owner's safety requirements.

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permitted by law with respect to its obligation to indemnify, defend, protect and hold harmless the Contractor, Architect, Architect's consultants and their constituents partners, employees, agents, representatives, stockholders, officers and directors (collectively, the "Indemnified Parties") from and against each and all of the following:

(1) Any claims, liabilities, loss, damage, cost, expense, including attorneys' fees, awards, fine or judgment, resulting from arising out of (i) the performance of the Work, or (ii) breach of the obligations of Subcontractors, or (iii) any other act or omission with respect to the Work by the Subcontractors, anyone directly or indirectly employed by it or anyone for those acts it may be liable, attributable to death, bodily injury, sickness, disease or injury to or destruction of tangible property (except for the Work), or loss of use thereof; provided, however, Subcontractor shall not be obligated to indemnify the Indemnified Parties to the extent such damages are the result of the negligence or willful misconduct of the Indemnified Parties. Such obligation shall not be construed as to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party disceibe in the paragraph. Subcontractor's obligation to defend the Indemnified Parties shall not extend to any action, proceeding or arbitration which asserts or alleges only that the injury to the claimant resulted solely from the negligence or misconduct of the Indemnified Party and from no other cause or if a final judgment is obtained establishing that such injury to the claimant resulted solely from the negligence or misconduct of the Indemnified Party, in which latter events, Subcontractor's obligation to defend such indemnified Party shall cease upon the date such judgment becomes final, and such Indemnified Party shall thereupon reimburse Subcontractor for its reasonable attorneys' fees and court costs in so defending the Indemnified Party. Subcontractor shall be obligated to defend an Indemnified Party to the extent the concurrent negligence of the Contractor or another Indemnified Party is alleged and upon the date a judgment becomes final established the extent of the Indemnified Party's negligence, the Indemnified Party shall thereupon reimburse Subcontractor for the pro rate portion of attorney's fees attributable to and to the extent of such negligence and pro rate portion of court costs in defending such Indemnified Party. (2) Any and all charges of every type, including claims against retainage, which may at any time be filed or claimed against the Project, or any portion thereof, as a consequence of acts or omissions of Subcontractor, Subcontractor's agents, servants, employees, Sub-subcontractors or any or all of them and which are not due to Subcontractor's failure to perform its obligations under this Subcontract. (3) Any claim, liability, loss, costs, damage or expenses, including attorneys' fees, on account of or through the use of the Project, or any portion thereof, by Subcontractor or by any other person whomsoever at the invitation, express or implied, of Subcontractor or by permission of Subcontractor or arising out of or indirectly or directly resulting from the performance of the Subcontractor by Subcontractor, any Sub-contractor, or anyone employed directly or indirectly by any of them or for whose acts they may be liable. (4) Any claims, liability, loss, cost, damage or expense, including attorneys' fees, arising out of or in connection with any claims by or any act or omission of any employee of Subcontractor, any Sub-contractor, anyone employed directly or indirectly by any of them or for whose acts they may be liable, including any claims under or related to or arising out of worker's compensation acts and other employee benefit acts.

agrees to defend Subcontractor's expense and with counsel acceptable to Contractor), indemnify and save and hold harmless the Contractor, the Owner, the Architect/Engineer and all of their officers, directors, shareholders, employees, agents, insurers, successors, and assigns, from and against any and all claims, suits, losses, causes of action, damages, liabilities, and expenses of any kind whatsoever, including without limitation, all expenses of litigation and arbitration, court costs, and attorney's fees, arising on account of or in connection with injuries to or the death of any person whomsoever, or any and all damages to property (including the loss of use thereof), regardless of possession or ownership, or damages of any other kind, which injuries, death or damages arise from, or are in any manner connected with, the work performed by or for the Subcontractor under this Subcontract, or are caused in whole or part by reason of the acts or omissions or presence of the person or property of the Subcontractor or any of its employees, agents, representatives, subcontractors, or suppliers, INCLUDING WITHOUT LIMITATION INJURIES, DEATH, OR DAMAGES WHICH ARISE FROM OR IN CONNECTION WITH, OR ARE CAUSED BY ANY ACT, ERROR, OMISSION, OR NEGLIGENCE OF THE CONTRACTOR, THE OWNER, THE ARCHITECT/ENGINEER and all of their OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, OR SUPPLIERS; BUT EXCLUDING INJURIES, DEATH, OR DAMAGES CAUSED BY THE SOLE NEGLIGENCE OR WANTON AND WILLFUL MISCONDUCT OF THE CONTRACTOR. The indemnification obligations under this Subcontract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the Subcontractor or of any third party to whom Subcontractor may sublet a part of the Work.

4.82 OSHA Violations. To the fullest extent permitted by law, the Subcontractor shall further indemnify and hold harmless the Owner, Contractor, Architect, and all of their officers, directors, shareholders, employees, agents, subcontractors, and suppliers from and against all OSHA claims, damages, losses, and expenses, including without limitation, fees or fines and attorneys' fees arising out of or resulting from, the performance, under this Subcontract, of the Subcontractor, the Subcontractor's subcontractors, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. The Contractor assumes no liability for any of the claims, damages, losses, or expenses as set forth herein.

#### 4.90 Insurance and Bonds.

\*4.91 Insurance. Prior to starting the Work, the Subcontractor shall procure and maintain in force statutory Worker's Compensation Insurance for all of the Subcontractor's employees at the project site, Employer's Liability Insurance with \$500,000 coverage (each section), Commercial General Liability Insurance (including XCU coverage by subcontractors involved in utility work, excavation, mechanical, electrical and/or plumbing work) and Automobile Liability Insurance and such other insurance, to the extent required by the Contract Documents for the Work. Unless otherwise provided in this Agreement by Exhibit, the Subcontractor's Commercial General and Automobile Liability Insurance, as required by this provision shall be written for not less than the limits of liability per the Owner's requirements as listed in the Specifications Manual. The Commercial General Liability Policy shall contain broad form contractual liability coverage and endorsement listing the Owner and Contractor as additional insureds with coverage on a primary basis for the additional insureds (not contributory), and products/completed operations coverage, on Form CG2010 or an equivalent form acceptable to the Contractor. Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella policy. All policies providing coverage for the Work shall contain a waiver of subrogation endorsement in favor of the Owner, Contractor and their employees. Upon request from the Contractor, the Subcontractor shall deliver a copy of all policies of insurance required herein.

\* REGARDING SECTIONS 4.80 AND 4.81 SUB-  
CONTRACTOR SHALL BE RESPONSIBLE  
FOR INDEMNIFICATION AND DEFENSE  
OF CLAIMS ONLY TO THE EXTENT THAT  
SUCH CLAIMS ARE CAUSED BY SUBCONTRACTOR.

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Subcontractor shall deliver to Contractor original Certificates of Insurance acceptable to Contractor which evidence the coverages and endorsements required herein and which contain a provision that coverages under the applicable insurance policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Contractor. Any failure of the Contractor to demand or complain of any deficiencies in coverages required herein shall not in any manner waive or excuse the performance required of the Subcontractor or reduce its liability. If the Subcontractor subcontracts any portion of the Work, the Contractor may further require that Subcontractor deliver to Contractor original Accord Certificates of Insurance acceptable to Contractor with the same coverages and provisions as required of the Subcontractor.

- 4.93 Bonds. The Subcontractor also agrees to provide such performance bonds and payment bonds as may be required by the Contractor.

#### **PAYMENT TERMS**

- 5.10 Invoices. The Subcontractor shall forward all invoices to Ethan Construction, to the address listed on the Payment Package attached to this subcontract.
- 5.11 Lien Waivers and Releases. No payments to the Subcontractor will be processed unless the Subcontractor and any of its applicable subcontractors have executed a lien waiver, and as to any Subcontractor who has previously filed a lien, a lien release, in a form acceptable to the Contractor with respect to each invoice submitted to the Contractor.
- 5.12 Change Orders. Invoices for change orders must be billed separately, attached to a copy of the additional Work Authorization Form, as defined herein.
- 5.20 Documents Required. No payments to the Subcontractor will be processed unless the Contractor has received executed copies of this Subcontract, current certificates of insurance as required by Section 4.9., and current copies of required licenses from the Subcontractor.
- 5.30 Information Required. No payments to the Subcontractor will be processed until the Subcontractor supplies information to the Contractor as to the source of materials and labor being provided for the Work and verification of payment for such materials and labor. All such information must be supplied within twenty (20) days of the commencement of the Work or the supplying of the materials and labor. The Contractor may obtain or verify the information required by direct contact with the suppliers of materials and labor.
- 5.40 Use Tax Deductions. The Subcontract Sum is subject to a deduction for Use Tax paid by the Contractor.
- 5.50 Progress Payments. The Subcontractor shall submit progress payment requests to the Contractor stating the amount of work completed. Payment shall be made to the Subcontractor only after receipt by the Contractor of applicable progress payments from the Owner.
- 5.51 Final Payment. Final payment shall ~~not~~ be due to the Subcontractor ~~until final payment has been received by the Contractor from the Owner.~~ Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment and all known indebtedness connected with the Work have been paid or extinguished. Further, before making final payment to the Subcontractor, the Subcontractor shall execute and submit to the Contractor in a form acceptable to the Contractor a lien waiver, or if applicable a lien release, conditional upon final payment to the Subcontractor, and submit unconditional lien waivers or releases to the Contractor for all suppliers of materials and labor provided by the Subcontractor in forms acceptable to the Contractor. (RWS)
- 5.52 Retainage. Ten percent (10%) of the Subcontract Sum may be retained by the Contractor until all of the Work has been satisfactorily completed and all required documentation has been received by the Contractor, or as specifically stated in "Additional Provisions"
- 5.53 Payment Not Approval. No payment to the Subcontractor shall operate as an approval of the Work, or any portion thereof.
- 5.60 Lack of Lien Waivers or Releases. If the Subcontractor fails to provide the lien waivers or releases required by this Subcontract, the Contractor, in its sole and absolute discretion, may either (1) withhold payment or (2) issue checks jointly payable to the Subcontractor and the supplier(s) of labor and materials.
- 5.70 Payment by Owner. Notwithstanding any other provision in this Subcontract, the Subcontractor represents that it relies primarily on the Owner's credit and ability to pay, and not that of the Contractor, for payment of the work performed. The Subcontractor agrees that payment by the Owner to the Contractor for work performed by the Subcontractor shall be an express condition precedent to any obligation of the Contractor to pay the Subcontractor.

- 6.10 Authorization. The Subcontractor shall not incorporate any extra labor or materials into the Work and the Project without first receiving approval from the Project Manager in the form of an additional Work Authorization Form. The Subcontractor acknowledges receipt of the Work Authorization Form from the Contractor. The Subcontractor must provide documentation acceptable to the Contractor to substantiate any requests by the Subcontractor for extra labor or materials. In the exceptional case in which extra labor or materials must be provided by the Subcontractor prior to submitting the Work Authorization Form to the Contractor, the Subcontractor agrees to submit the Work Authorization Form to the Contractor and to obtain written authorization, within 2 working days of such additional labor or materials being provided. Materials and labor provided without a properly submitted, executed and approved Work Authorization Form will not be reimbursable to the Subcontractor.

- 6.20 Changes in Work. The Subcontractor may be ordered by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of the Subcontract Documents, consisting of additions, deletions or other revisions. Materials and labor which are provided after such additions, deletions or revisions but are not in conformity therewith shall not be reimbursable to the Subcontractor. The Subcontractor is limited to a maximum of no more than 15% of the cost of any such additions, deletions or other revisions requested by the Contractor in accordance with this Section 6.2, as compensation for providing such additions, deletions or other revisions, or, in the event that a specific percentage has not been set forth above, the maximum amount of such additional compensation shall be limited to the amount specified in the General Contract.

- 6.30 Denial of Changes. Notwithstanding any other provision in this Subcontract, if the additional work which has been authorized in accordance with this Section 6 is later determined by the Owner or Architect not to entitle the Contractor to extra compensation for the additional work, or the Owner otherwise fails to pay the Contractor for such additional work, then the Contractor shall not be liable to the Subcontractor for any extra compensation for the additional work.

#### **TERMINATION, REMEDIES, BREACH OF CONTRACT**

##### **7.00 TERMINATION AND REMEDIES FOR BREACH OF THE SUBCONTRACT.**

- 7.10 Breach by Subcontractor. The Subcontractor shall be in default of this Subcontract, which shall also be considered a breach, if the Subcontractor is adjudged a bankrupt, or makes a general assignment for the benefit of Subcontractor's creditors, or if a receiver is appointed on account of the Subcontractor's insolvency, or if the Subcontractor refuses or fails to supply enough properly skilled workmen or proper materials, or if the Subcontractor fails to make prompt payment to its subcontractors, or for materials or labor, or the Subcontractor fails to comply with the terms of the Subcontract Documents. In the event of a breach of this Subcontract by the Subcontractor, the Subcontractor agrees to pay any damages, and indemnify and hold harmless the Contractor for any and all losses, expenses, and liabilities incurred by the Contractor, including the Contractor's reasonable attorneys' fees.
- 7.20 Remedies of Contractor. If the Subcontractor has breached the Subcontract, or neglects to carry out the Work and fails within three (3) working days after receipt of written notice of default from the Contractor to commence and continue correction of such default, the Contractor may, without prejudice to any right or remedy of the Contractor, terminate this Subcontract and take possession of the Project site and all materials, equipment, tools, construction equipment and machinery thereon owned by the Subcontractor, and may finish the Work by whatever method the Contractor deems expedient, or without terminating this Subcontract it may correct the default and charge the Subcontractor for the cost of such correction and deduct same from the Subcontract Sum. If the Contractor must finish the Work, the Subcontractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Subcontract Sum exceeds the cost of finishing the Work and any other amounts subject to offset or withholding under the Subcontract, such excess shall be paid to the Subcontractor. If the cost of finishing the Work exceeds the unpaid balance of the Subcontract Sum, the Subcontractor shall pay the balance to the Contractor.
- 7.30 Liquidated Damages. In addition to all other remedies which may be available to the Contractor, the Subcontractor agrees to pay any damages, including liquidated damages, losses, and expenses, including without limitation attorneys' fees, which may be assessed against the Contractor as a result of the General Contract, arising out of or resulting from the performance under this Subcontract of the Subcontractor, the Subcontractor's subcontractors or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, including, without limitation, damages for delays or other problems associated with the Work.

30 DAYS AFTER COMPLETION AND MUTUAL ACCEPTANCE OF SUBCONTRACTORS WORK.

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which shall also be considered a breach, if the Contractor fails to make the payments due hereunder within sixty (60) days of the due date of such payment, which shall be determined by the date the Owner pays the Contractor for the work performed by the Subcontractor. In the event of such breach by the Contractor, the Subcontractor shall be entitled to cease its performance of the Work until such payment has been made by the Contractor as provided in Section 5.

- 7.41 Damages for Delay. The Contractor shall not be liable to the Subcontractor for any damages or additional compensation due to delays caused by any third party unless the Contractor has recovered same on behalf of the Subcontractor, and in the absence thereof the Subcontractor's sole and exclusive remedy for delay shall be extension of the time for performance and completion of the Work.

#### **SUBCONTRACTOR STATUS**

- 8.10 Independent Contractor. The Contractor reserves no control over the Subcontractor as to how the services involved in this Subcontract should be performed, except as otherwise stated herein. The Subcontractor's obligation is to accomplish the results contemplated by the Subcontract Documents. The Subcontractor acknowledges that it is a business customarily engaged in an independent trade, occupation, profession, or business related to the services contemplated by this Subcontract. It is the intention of the parties to this Subcontract that the Subcontractor shall be an independent contractor and this Subcontract shall be construed in light of this intention. The Subcontractor shall execute and deliver to the Contractor any document requested by the Contractor to confirm such status.
- 8.20 Nonentitlement. The Subcontractor is not entitled to worker's compensation or unemployment compensation or other benefits from the Contractor. Further, the Subcontractor shall be obligated to pay all federal and state income taxes and withholdings, and worker's compensation and unemployment compensation insurance for itself and its employees.
- 8.30 Disputes with Owner. The Subcontractor irrevocably designates the Contractor as the Subcontractor's sole and exclusive agent with respect to any and all claims which the Subcontractor may have against the Owner as a result of the Project. In conjunction therewith, the Contractor may retain legal counsel, compromise claims, pursue litigation or arbitration, release claims or take any other action which the Contractor deems advisable in its sole discretion without liability to the Subcontractor. If there are multiple claimants with claims against the Owner, the Contractor shall allocate, upon a pro-rata basis, the respective interests of all the claimants including the Subcontractor, and the Subcontractor agrees to be bound by any such allocation. If the Contractor receives any payment as a result of such claims, the Subcontractor shall receive its pro-rata share of the payment received after deduction for the Subcontractor's pro-rata share of legal expenses, costs and other expenses incurred by the Contractor in pursuit of the claim. Notwithstanding the foregoing, the Subcontractor shall be liable for its pro-rata share of such expenses as incurred by the Contractor and shall reimburse the Contractor therefor upon request by the Contractor. The Subcontractor agrees to cooperate diligently in the prosecution of any such claims. Further, the Subcontractor agrees not to seek recovery from the Contractor for the Subcontractor's claims except to the extent that such claims are recovered from the Owner, and to fully release the Contractor for any actions taken by the Contractor and its agents in pursuit of the Subcontractor's claims. If the Subcontractor fails to comply with the terms of this Section 8.3, the Subcontractor waives any right to payment of its claims and the Contractor may retain any amounts otherwise payable to the Subcontractor. Notwithstanding the foregoing, the Contractor is under no obligation to pursue any such claims and the Contractor may, in its sole discretion, waive its rights under this Section 8.3. In such case the Subcontractor shall be free to pursue directly any claims it may have against the Owner.

#### **MISCELLANEOUS PROVISIONS**

- 9.01 Assignment Prohibited. The Subcontractor shall not let, assign, or transfer the Subcontract or any part thereof, or any interest therein.
- 9.02 Inurement. The terms of this Subcontract shall be binding upon and inure to the benefit of, and shall be enforceable by, all parties hereto, their personal and legal representatives, guardians, successors and assigns to the extent, but only to the extent that assignment is provided for in accordance with, and permitted by, the provisions of this Subcontract.

construed and interpreted in accordance with the laws of the State of Washington, United States of America, irrespective of the fact that any one of the parties now is, or may become a resident of a different state or country. Exclusive jurisdiction for purposes of this Subcontract shall be in the District Court for the State of Washington, City Seattle and County of King.

- 9.04 Waiver of Jury Trial. The Subcontractor hereby irrevocably waives and relinquishes any right to have a dispute between the parties submitted to jury trial.
- 9.05 Severability. Any provision of this Subcontract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the rest of this Subcontract. The Rule of Construction which provides that ambiguities in a contract shall be construed against the drafter shall not apply to this Subcontract and Subcontractor waives any such defense to the terms of this Subcontract.
- 9.06 Time. Time is of the essence under this Subcontract.
- 9.07 Nonwaiver. The failure of any party or all parties to insist, in any one or more instances, upon performance of any of the terms or conditions of this Subcontract shall not be construed as a waiver or a relinquishment of any right granted hereunder of the future performance of any such term, covenant or condition, but the obligations of all parties with respect thereto shall continue in full force and effect.
- 9.08 Further Assurances. The parties hereto agree that they and each of them will take whatever action or actions as are deemed by counsel to the Contractor to be reasonably necessary or desirable from time to time to effectuate the provisions or intent of this Subcontract, and to that end, the parties agree that they will execute, acknowledge, seal, and deliver any further instruments or documents which may be necessary to give force and effect to this Subcontract, or any of the provisions hereof, or to carry out the intent of this Subcontract.
- 9.09 Counterparts. This Subcontract may be executed in several counterparts, each of which may be deemed an original, but all of which together shall be deemed one instrument.
- 9.10 Facsimile Signatures. Facsimile signatures shall be deemed to be the same as original signatures.
- 9.11 Warranty of Authority. The signator of this Subcontract warrants that he or she has full authority to execute the Subcontract on behalf of and to bind the Subcontractor, and the Subcontractor warrants that it has full authority to enter into this Subcontract.

## ADDITIONAL PROVISIONS

### General

#### ❖ Project Schedule - Attached

Subcontract Registration Package - Attached

Subcontract Payment Package - Attached

Maintain project schedule as directed by the project superintendent.

No extra work without prior authorization from the project manager.

#### ❖ 90% of approved invoices paid not later than 15 days after receipt of monies from the Owner.

Contract balance paid no later than 30 days after release of retained monies by owner, payment of all labor, materials and taxes by subcontractor, and receipt of all final waivers.

#### ❖ Comply with the requirements of any regulatory agency having jurisdiction. Provide written notice to the General Contractor if contract documents do not meet these requirements. Obtain or coordinate inspections and provide inspection documentation.

Instruct workers in regard to the safe completion of site activities. Provide evidence of training upon request.

Provide Material Data Safety Sheets for Section products upon request.

-Examine preceding work, commencement of work is acceptance of conditions. Protect surrounding areas to preclude damage. Use qualified and experienced workers to complete work. Ensure that environmental conditions are met before proceeding.

-Remove debris on a constant basis to eliminate hazards. Complete thorough site cleanup, including removing debris from site and reorganizing materials, weekly, or as directed by Superintendent. Leave work area "broom clean" at conclusion of work.

-Deliver products in original packaging. Deliver as required for installation, do not encumber site. Employ good trade practice in storing and protecting products until installation. Replace at own cost any material failing to meet specifications.

Charge Out Rates	Supervisor	55.93
	Foremen	51.72
	Tradesperson	48.52
	Laborer/Apprentice	41.91
	Material Markup %:	15%
	List Attached	<input type="checkbox"/>

### Inclusions

Rebar installation is per unit ton at a rate of \$1,575.00 per ton. Contractor to provide weight tickets from supplier as material arrives on site.

This contract includes all labor, materials, and equipment required for a "complete" installation of concrete and reinforcing steel subject to the General Conditions and excluding only the specifics listed. Provide adequate crew, supervision and resources to meet contract schedule

Provide scaffolding where necessary for a safe working condition.

Provide submittal for concrete and test panels to be approved by structural engineer.

Complete all layout and staking required from reference points provided by General Contractor

Complete formwork to normal industry practice to withstand pressure of concrete and required consolidation techniques without deflecting.

Coordinate inspection requests with Site Superintendent and/or Project Manager in written form

Provide blockouts for other trades, according to layout by that trade for openings in excess of 100 sq inches.

Place concrete in accordance with ACI standards for rate of pour. Maintain a rate of placement in conformance with ACI 347

Consolidate concrete by mechanical vibration in accordance to ACI 309. Ensure consistent settlement (where necessary). All concrete will have a float finish.

Strip concrete removing all wood debris and material. Break off ties and other casting restraints below surface in all exposed work. Knock off ridges and burrs, and fill any surface voids greater than 2 sq in immediately with matching cement / sand and bonding agent

All shotcrete wall will have a curing compound. Provide submittal on material being used.

Signing of this contract supercedes any other written or verbal agreement relating to the installation of shotcrete and reinforcing steel for the aforementioned project.

### Exclusions

Reinforcing Steel material

Hoisting of reinforcing steel to work location (excluding placing)

Sawcutting, Demolition of existing structure

Permits, testing and coring

Drill and epoxy reinforcing dowels

Earthwork

Patching for existing slab on grade

Dewatering

Washington State Sales Tax

Building 8 and 13 has been removed from the contract

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and acknowledged this Subcontract as of the date first written above.

### SIGNATURES

Ethan Construction

By

By

~~Vice President - Operations~~

Conco

By

Title

Rainier Commons

File: 041107 5.5-

To acct:

RCLLC 0000201



18644 72ND AVENUE SOUTH • KENT, WA 98032  
PHONE (425) 251-1684 • FAX (425) 251-6548  
LICENSE #CONCOCCO44LS

**FAX TRANSMITTAL**

TO: **Ariel Development, Inc.**  
**206.447.0299**

FROM: **Kim Meyers**  
**Conco NW**

DATE: <u>12/8/04</u>	JOB NO.
ATTENTION: <b>John Jack</b>	
RE: <b>Ranier Commons, Revised Bid</b>	
PAGES INCLUDING COVER: <u>43</u>	

**REMARKS:**

**Please see attached.**  
**Feel free to contact me with any questions.**  
**Regards, Kim**

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"EQUAL OPPORTUNITY EMPLOYER"

**RCLLC 0000202**



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December 8<sup>th</sup>, 2004

Mr. John Jack  
Ariel Development  
3100 Airport Way S.  
Seattle, WA 98134

John,

Conco is pleased to submit our REVISED quote for ALL shotcrete walls of the Ranier Commons Project (walls in Building 7, 8, 13, 21, 22, 25). Our quote is based on structural drawings dated April 14, 2004. Please see the attached spreadsheet for clarification of wall elevations and backform required.

**Work Included:**

1. Formwork for the shotcrete walls.
2. Furnish, place and finish a shotcrete mix for shotcrete walls.
3. Providing of a float finish on the shotcreted side of shotcrete walls.
4. Curing concrete, using a curing compound.
5. Install and remove shotcrete backform where necessary (see attached spreadsheet). Conco plans to leave behind shotcrete backform where necessary.
6. Dispose of all our shotcrete debris into Conco supplied debris boxes, or areas as discussed with GC.
7. Scaffolding for our work.
8. Cleanup, safety, and supervision for our work.
9. Shotcrete test panels.

**Work Not Included:**

1. Supply and install of ALL reinforcing, including templates. See Add Alternate for placing costs.
2. Hoisting for reinforcing.
3. Sawcut, demolition, chipping, and removal of existing structure.
4. Sandblasting or preparation of existing surfaces that receive new concrete against them.
5. Infill of existing openings not shown on drawings.
6. Supply and installation of any miscellaneous metals.
7. All permits, testing, inspection and coring costs.
8. Costs incurred as a result of performing work in the presence of hazardous materials.
9. Sales Tax.
10. Shoring of existing structure.
11. Shotcrete work involved with chimney infills.
12. Removal of existing piping. Assume all piping, equipment, machinery clear of our area of work before Conco mobilizes on site.
13. Installation or supply of metal deck.
14. Epoxy injection crack repair.
15. All drill and epoxy.
16. Patch back of existing slab on grade.
17. Any work associated with new footings.
18. Infill of existing openings per 2/S3.8 and 6/S3.8.
19. Concrete cap per 9/S5.7.
20. Infill of existing pit located at the base of the west exterior wall, building 13, with concrete.
21. Dewatering.
22. Excavation.

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**Assumptions:**

1. All walls will be available for our work at the same time.
2. Conco's work to start January 2005.
3. Shearwall dimensions were taken per shearwall elevations on S4.1, 4.2, 4.3, 4.4 where plan view of wall conflicted with that shown on wall elevations. Assume top of wall elevations are per concrete shearwall elevations, except where clarified below.
4. Assume at building 7, north wall, per elevation 3/S4.3, openings at every level.
5. Assume building 25, west wall, per elevation 2/S4.1, level 2-level 3 shearwall NIC per field visit. New shearwall in this location starts at elevation 43'.
6. Infill of wall per S2.2a, building 25 center wall, not included. Extent of infill in this area is unclear.
7. Conco assumes to shoot against existing Styrofoam, brick, or concrete walls where walls remain.
8. Quote is based on performing work during normal working hours, Monday through Friday.
9. We have assumed a float finish on shot face of walls.
10. Assume walls are 4000psi concrete.
11. Assume metal deck is installed before shotcrete walls or General Contractor to provide 10' wide work platforms @ each level.

# 188,630

**Revised Lump Sum Quote: \$200,000**

Per conversation on 12/8/04

**Add Alternate 1:****\$1,575/ton**

For installation of reinforcing.

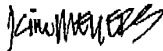
30,337.65

GC to stock rebar at each wall location, at each floor.

If you have any questions, please give me a call.

Respectfully,

Conco Cement Co.



Kim Meyers

218,967.65



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PHONE (425) 251-1684 • FAX (425) 251-6548  
LICENSE #CONCOCCO44LS

January 17<sup>th</sup>, 2005

Mr. John Jack  
Ethan Construction  
3100 Airport Way S.  
Seattle, WA 98134

John,

Please see the following credit for the shotcrete walls at Buildings 8 & 13 at the Rainier Commons project:

Building 8: 248 sf 8" wall  
Building 13: 294 sf 12" wall  
542 sf Total = \$11,370

Please deduct \$11,370 from our contract price for removing Buildings 8 & 13 from our scope of work.

If you have any questions, please give me a call.

Respectfully,

The Conco Companies

A handwritten signature in black ink, appearing to read 'Kim Meyers'. The signature is written in a cursive, flowing style.

Kim Meyers

"EQUAL OPPORTUNITY EMPLOYER"

RCLLC 0000205



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LICENSE #CONCOCCO44LS

### FAX TRANSMITTAL

TO: **Ethan Construction**  
**206.447.0299**

FROM: **Kim Meyers**

DATE:	1.17.05	JOB NO.
ATTENTION:	John Jack	
RE:	Rainier Commons, Building 8 & 13 credit	
PAGES INCLUDING COVER: 2		

REMARKS:

Please see attached.  
Feel free to contact me with any questions.  
Regards, Kim

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